

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

LEHMAN BROTHERS HOLDINGS INC.,

Debtor.

Chapter 11 Case

No. 08-13555 (SCC)

(Jointly Administered)

STIPULATION AND ORDER

WHEREAS, on January 10, 2017, the Honorable Shelley C. Chapman held an informal chambers conference (the “Conference”) with Lehman Brothers Holdings Inc. as Plan Administrator under the *Modified Third Amended Joint Chapter 11 Plan of Lehman Brothers Holdings Inc. and its Affiliated Debtors* for certain entities in the above-referenced chapter 11 cases, on behalf of Lehman Brothers Special Financing Inc. (“LBSF”), and Shinhan Bank (“Shinhan” and, together with LBSF, the “Parties”), along with the Honorable Ralph Mabey (the mediator during the underlying mediation between the Parties), concerning the enforceability of a settlement between the Parties;

WHEREAS the Parties were unable to resolve their dispute during the Conference;

WHEREAS the Parties instead agreed to submit their dispute concerning the enforceability of the settlement to the Court by way of a motion made by LBSF (the “LBSF Motion”) pursuant to 11 U.S.C. § 105 and Sections 12 and 16 of the Amended Order Providing for Alternative Dispute Resolution Procedures for Affirmative Claims of the Debtors Under Derivatives Transactions with Special Purpose Vehicle Counterparties, dated July 18, 2012 [Chapter 11 Case No. 08-13555 (SCC), ECF No. 29507] (the “ADR Order”);

WHEREAS, at the Conference, the Court agreed to consider this dispute by way of motion practice;

IT IS HEREBY STIPULATED by the Parties that neither party will assert, either before the Bankruptcy Court or any appellate court, that the LBSF Motion constituted an inappropriate procedure for resolving the dispute or that the Court does not have authority to consider the LBSF Motion and issue appropriate orders and substantive relief thereupon;

IT IS HEREBY FURTHER STIPULATED by the Parties that the briefing schedule and hearing dates for the LBSF Motion shall be as follows:

- **January 30, 2017:** Deadline for LBSF to file the LBSF Motion
- **February 17, 2017:** Deadline for Shinhan's response to the LBSF Motion
- **March 2, 2017:** Deadline for LBSF's reply
- **March 21, 2017:** The Court will hear oral argument on the LBSF Motion at 2:00 p.m. at the United States Bankruptcy Court, One Bowling Green, New York, New York 10004;

IT IS HEREBY FURTHER STIPULATED by the Parties that neither Party shall be entitled to conduct discovery with respect to the LBSF Motion; and

IT IS HEREBY FURTHER STIPULATED by the Parties that the following facts shall be deemed true and undisputed for purposes of the LBSF Motion:

1. LBSF and Shinhan mediated the matter on April 6, 2016 with the Honorable Ralph Mabey acting as mediator.
2. At the conclusion of the mediation, the mediator proposed that the Parties settle this matter by Shinhan paying LBSF a certain amount (the "Settlement Amount").
3. On or about April 20, 2016, both LBSF and Shinhan accepted the mediator's proposal as to the Settlement Amount and the mediator asked LBSF to provide settlement documentation to Shinhan. *See* Stipulated Ex. A (April 20, 2016 email

from Brian Koosed, counsel for Shinhan); Stipulated Ex. B (REDACTED copy of April 20, 2016 email from Judge Mabey).

4. On April 21, 2016, LBSF sent a draft agreement, entitled “Release Agreement” (the “Agreement”), to Shinhan’s counsel for review and comment. Stipulated Ex. C at 8 (April 21, 2016 email from Matthew Cucolo) (REDACTED).
5. Shinhan proposed changes to the Agreement on May 11, 2016. *Id.* at 7 (May 11, 2016 email from Priya Chadha).
6. LBSF accepted Shinhan’s proposed changes to the Agreement on May 12, 2016. *Id.* at 6-7 (May 12, 2016 email from Matthew Cucolo).
7. On May 19, 2016, Shinhan, through its counsel, requested that: (a) rather than sign in counterparts, LBSF send Shinhan two original, signed copies of the Agreement; and (b) LBSF provide a Board resolution and other documents establishing the Lehman signatory’s authority to sign the Agreement. *Id.* at 4-5 (May 19, 2016 email from Priya Chadha).
8. On May 27, 2016, LBSF advised Shinhan’s counsel that LBSF had sent the requested materials to Shinhan, including the requested Board resolution and other documents, and two original, signed copies of the Agreement. *See* Stipulated Ex. D (LBSF-executed and notarized copy of the Agreement, dated May 26, 2016, as sent to Shinhan, with redactions); Stipulated Ex. E (May 25, 2016 Certification of LBSF Settlement Instructions, as sent to Shinhan); Stipulated Ex. F (LBHI’s Secretary’s Certificate attaching Board Resolution Naming Christopher O’Meara as Chief Executive Officer and President, as sent to Shinhan); Stipulated Ex. G (LBHI Certificate of Incumbency, as sent to Shinhan).

9. On May 27, 2016, Shinhan's counsel: (a) acknowledged that LBSF had advised that it had sent the package to Shinhan; and (b) noted that Shinhan's counsel would advise Shinhan that "the package is on its way . . ." Stipulated Ex. C at 4 (May 27, 2016 email from Brian Koosed confirming voicemail from Matthew Cucolo).
10. On June 14, 2016, in response to an inquiry from LBSF, Shinhan's counsel advised LBSF that "Shinhan is trying to get everything signed up and payment remitted by the end of this week." *Id.* at 3 (June 14, 2016 email from Brian Koosed).
11. On June 17, 2016, Shinhan's counsel followed up on the June 14, 2016 correspondence and updated LBSF that, because some members of Shinhan's staff were out of the office, "Shinhan was not able to complete its internal approval process this week" and that "it looks like the week of June 27 is most likely for signature/payment." *Id.* (June 17, 2016 email from Brian Koosed).
12. LBSF again followed up with Shinhan's counsel on June 28, 2016 at 10:31 a.m. *Id.* at 2 (June 28, 2016 email from Matthew Cucolo).
13. At 10:39 a.m. on June 28, 2016, Shinhan's counsel responded that "Shinhan just confirmed that they have completed their internal approval process and the Settlement Agreement will be signed by Thursday June 30 (Korea time), after which they will remit the Settlement Amount." *Id.* at 2 (June 28, 2016 email from Brian Koosed).
14. Several hours after the emails described in Paragraphs 12 and 13 above were exchanged, this Court issued its decision in *LBSF v. Bank of America Nat.*

Association et al., No. 10-03547, Dkt. 1360, June 28, 2016 (the “BofA Order”), dismissing LBSF’s claims against, among others, Shinhan.

15. On June 30, 2016, LBSF wrote to Shinhan’s counsel that “[w]e have not seen the wire come in yet today. Please let me know which bank Shinhan has used to wire the Settlement Amount” Shortly thereafter, Shinhan’s counsel responded to LBSF that, “[a]s we and our client are still evaluating [the BofA Order] and expect to continue to do so over the next few days, we will get back to you on this sometime next week.” *Id.* at 1 (June 30, 2016 email from Brian Koosed).
16. LBSF responded by saying “I do not see how the decision affects our agreement. We had a final agreement with your client as you confirmed on Tuesday, so the wire [transfer of the Settlement Amount] should be made.” *Id.* at 1 (June 30, 2016 email from Matthew Cucolo).
17. In the attached Declaration of Joo Han Park, Deputy General Manager at Shinhan (the “Park Declaration”), Shinhan attests that as of this date “Shinhan has not signed the Agreement, nor has Shinhan paid LBSF the ‘Settlement Amount.’” *See* Ex. H hereto (Park Declaration), ¶ 3. For purposes of the LBSF Motion, LBSF does not contest the facts attested to in the Park Declaration.

Dated: January 27, 2017
Redwood Shores, CA

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*Attorneys for Lehman Brothers Holdings Inc.
and Lehman Brothers Special Financing Inc.*

APPROVED BY THE COURT AND

SO ORDERED THIS 31st DAY

OF JANUARY, 2017:

/S/ Shelley C. Chapman
UNITED STATES BANKRUPTCY JUDGE